

LESTER L. LEARNED

IBLA 80-941

Decided April 17, 1981

Appeal from the decision of the Nevada State Office, Bureau of Land Management, rejecting for purposes of recordation the notice of location, map, and filing fee for mining claim N MC 165474.

Reversed and remanded.

1. Federal Land Policy and Management Act of 1976: Generally--Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

When the owner of a lode or placer mining claim files a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim, he has complied with sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2.

APPEARANCES: Lester L. Learned, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Lester L. Learned appeals the decision of the Nevada State Office, Bureau of Land Management (BLM), dated August 26, 1980, returning his notice of location, map, and filing fee for the Joyce mining claim, N MC 165474 because he had not filed the notice with BLM within 90 days after the date of location as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the corresponding regulation, 43 CFR 3833.1-2(b). The decision indicates that BLM believed the date of location to be May 17, 1980, and that the filings were received on August 25, 1980, 100 days later.

In his statement of reasons, appellant reports that the actual date of location for the Joyce claim was May 27, 1980, and that the date may have been blurred on the copy of the location notice sent to BLM.

[1] Section 314 of FLPMA requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of the location. It also provides that failure to file timely such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. The Board has repeatedly held that when a notice of a mining claim is not filed with BLM within 90 days from the date of location, it has no force and effect and must be rejected. M. J. Reeves, 41 IBLA 92 (1979); William E. Rhodes, 38 IBLA 127 (1978); R. Wade Holder, 35 IBLA 169 (1978).

Here, however, it appears from examination of appellant's notice of location that he located the Joyce claim on May 27, 1980, and that therefore he timely filed his claim for recordation under section 314 of FLPMA. We believe BLM may have misread the date as the numbers on the file copy of the notice are lightly printed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case file remanded for recordation of mining claim N MC 165474.

James L. Burski
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Bruce R. Harris
Administrative Judge

